

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

**BAYER CORPORATION
AND SUBSIDIARIES,**

**Plaintiff and
Counterclaim Defendant,**

VS.

THE UNITED STATES,

**Defendant and
Counterclaim Plaintiff.**

CIVIL ACTION NO. 09-351

**BAYER-ONYX, a partnership, by
BAYER HEALTHCARE LLC,
its tax matter partner,**

Plaintiff,

**Consolidated For Discovery With
CIVIL ACTION NO. 08-693**

VS.

THE UNITED STATES,

Defendant.

JOINT STATUS REPORT

The Parties, Plaintiff and Counterclaim Defendant Bayer Corp. and its Subsidiaries and Plaintiff Bayer-Onyx (collectively “Bayer”) and the Defendant and Counterclaim Plaintiff, the United States, jointly submit this Status Report to the Special Master in this case, Thomas D. Arbogast.

1. On September 20, 2010, the Special Master heard argument on the Defendant's Motion To Compel Plaintiffs To Answer Interrogatory Number 26 (the "Motion To Compel").

2. The Motion To Compel sought to require Bayer to “identify and describe each new or improved business component Bayer contends it incurred qualified research expenses to develop during the credit years.”

3. During the course of the argument, Bayer stated that it did not have any single listing of all such business components nor was it required to compile such a listing at the outset of the litigation to prevail on its claims under 26 U.S.C. §41. Rather, Bayer stated that while its records do contain extensive information regarding all of the relevant business components, and while Bayer will ultimately be able to identify and prove the business components to which its qualified research pertained, the organization of its business records do not allow Bayer to create a standalone listing of business components at this time without substantial time and great expense.

4. The Defendant stated that while its preference was to start with a list of all relevant business components – so as to properly evaluate the possible use of sampling techniques to streamline discovery and trial in the case – it was willing to consider other proposals from Bayer.

5. The Defendant indicated that it would request further information from Bayer to enable the Defendant to evaluate any future sampling proposals.

6. Based upon the discussion at the hearing and feedback from the Special Master, the Parties agreed to the following:

- a. The Defendant agreed to table its Motion To Compel;
- b. The Defendant would serve, and has now served, additional discovery requests to Bayer to better understand the scope of Bayer’s claims and the organization of Bayer’s records to enable to Defendant to evaluate any future sampling proposals; and

c. Bayer will reevaluate its response to Interrogatory Number 26 to determine if it can further clarify its response.

7. The Parties will report back to the Special Master no later than November 15, 2010, regarding their efforts to resolve the issues raised in the Defendant's Motion To Compel.

Respectfully submitted,

Counsel for Plaintiffs

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